KAREN P. HEWITT
United States Attorney
A. DALE BLANKENSHIP
Assistant United States Attorney
California State Bar No. 235960
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893
Telephone: (619) 557-6199/(619) 235-2757 (Fax)
Email: Dale.Blankenship@usdoj.gov

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Criminal Case No. 08CR0883-JAH
Plaintiff,	)	DATE: April 28, 2008 TIME: 8:30 a.m.
v.	)	
GUMERCINDO GONZALEZ-BASTIDA,	)	STATEMENT OF FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF GOVERNMENT'S MOTION FOR RECIPROCAL DISCOVERY AND FINGERPRINT EXEMPLARS
Defendant.	)	

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, KAREN P. HEWITT, United States Attorney, and A. DALE BLANKENSHIP, Assistant United States Attorney, and hereby files the attached statement of facts and memorandum of points and authorities in support of government's motion for reciprocal discovery and fingerprint exemplars.

//

//

//

//

//

//

//

I

STATEMENT OF THE CASE

On March 26, 2008, a federal grand jury in the Southern District of California returned a one-count Indictment charging Defendant with Attempted Entry after Deportation, in violation of Title 8, United States Code, Section 1326. Defendant was arraigned on the Indictment on April 1, 2008, and entered a not guilty plea.

II

STATEMENT OF FACTS

A. INSTANT OFFENSE

On March 3, 2008, at approximately 5:40 a.m., United States Border Patrol Agent Isaia Isaia was conducting linewatch duties in the area known as "Bell Valley." This area is approximately 5 miles east of the Tecate, California, Port of Entry and approximately 300 yards north of the United States/Mexico border. Agent Isaia was alerted to the activation of a seismic intrusion device and responded to the area. Upon arriving in the area, Agent Isaia observed footprints leading north toward some bushes. Agent Isaia followed the footprints for approximately 40 yards and observed 8 individuals attempting to conceal themselves in the brush. Agent Isaia approached the individuals and identified himself as a U.S. Border Patrol agent and questioned each individual as to his citizenship and all of the individuals, including Defendant, Gumercindo Gonzalez-Bastida, stated that they were citizens of Mexico illegally in the United States.

Defendant and the other individuals were arrested and transported to the Tecate, California Processing Center. Due to an outage of the Department of Homeland Security Biometric Identification System, identification information for Defendant could not be immediately entered into the system. At approximately 2:45 p.m., the system allowed for the records check to be completed. During this records check, Agents determined that Defendant had a previous criminal and immigration history.

B. POST-MIRANDA STATEMENT

At approximately 4:10 p.m. on March 3, 2008, Border Patrol Agent Luis Martinez advised Defendant of his Miranda rights in the Spanish language during a videotaped interview. The rights advisal was witnessed by Border Patrol Agent Joseph Moore. Defendant indicated that he understood his rights and agreed to answer questions. Defendant stated that he illegally entered the United States with the purpose of traveling to San Bernardino, California, to work and visit his family. Defendant stated that he was a citizen of Mexico, that he does not have any documents that allow him to enter or reside in the United States, and that he has never applied for permission to enter the United States. Defendant acknowledged that his criminal and immigration documents were true and correct and that he had previously been in prison.

Defendant signed an affidavit stating that he is a citizen of Mexico; that he has no documents to enter the United States; that he was previously deported; and that he did not apply to the Attorney General for permission to re-enter the United States.

C. DEFENDANT'S CRIMINAL HISTORY

On April 12, 2002, Defendant was convicted of 2 counts in a multi-count information relating to the manufacture of methamphetamine. Defendant was convicted of manufacturing methamphetamine in violation of Cal. Penal Code § 11379.6(a) (Count 1); and possession of methamphetamine while armed in violation of Cal. Penal Code § 11370.1(A) (Count 8). Defendant was sentenced to 7 years' prison on Count 1; and 3 years on Count 8; the sentences on each count were run concurrent. Defendant's sentence was enhanced an additional 3 years for possession of a firearm in the commission of the offense in Count 1. This enhancement resulted in a total sentence of 10 years' prison.

D. DEFENDANT'S IMMIGRATION HISTORY

Defendant was ordered removed from the United States by an immigration judge on October 6, 2006. Defendant was removed pursuant to that order on October 13, 2006 via the San Ysidro, California, Port of Entry.

III

GOVERNMENT'S MOTIONS

A. UNITED STATES' MOTION FOR RECIPROCAL DISCOVERY

The Government has voluntarily complied and continues to comply with the requirements of Rule 16(a). To date, the Government has provided 42 pages of discovery, and 1 cd to Defendant. The audiotape copy of Defendant's removal hearing has been requested, but to date has not been received. Upon receipt it will be turned over to defense counsel. The United States, pursuant to Rule 16(b), hereby requests defendant to permit the United States to inspect, copy, and photograph any and all books, papers, documents, photographs, tangible objects, or make copies of portions thereof, which are within the possession, custody or control of defendant and which he intends to introduce as evidence in his case-in-chief at trial.

The United States further requests that it be permitted to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, which are in the possession or control of defendant, which he intends to introduce as evidence-in-chief at the trial or which were prepared by a witness whom defendant intends to call as a witness. The United States also requests that the court make such orders as it deems necessary under Rule 16(d)(1) and (2) to insure that the United States receives the discovery to which it is entitled.

Federal Rule of Criminal Procedure 26.2 requires the production of prior statements of all witnesses, except the defendant. The time frame established by the rule requires the statement to be provided after the witness has testified, as in the Jencks Act. Therefore, the United States hereby requests that defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before trial to be set by the court. This order should include any form these statements are memorialized in, including but not limited to, tape recordings, handwritten or typed notes and/or reports.

B. THE UNITED STATES'S MOTION FOR FINGERPRINT EXEMPLARS SHOULD BE GRANTED

Part of the United States' burden of proof in this case is to satisfy the jury that the Defendant is the same individual who was deported from the United States to Mexico. To make that showing, the United States will call an expert in fingerprint identification to testify that the Defendant is in fact the individual

whose fingerprints appear on the warrant of deportation. The most efficient and conclusive manner of establishing this information is to permit the expert witness himself to take a set of Defendant's fingerprints for comparison.

Defendant's fingerprints are not testimonial evidence. See Schmerber v. California, 384 U.S. 757 (1966). Using identifying physical characteristics, such as fingerprints, does not violate Defendant's Fifth Amendment right against self-incrimination. See United States v. DePalma, 414 F.2d 394, 397

(9th Cir. 1969); Woods v. United States, 397 F.2d 156 (9th Cir. 1968). The United States therefore respectfully requests that the Court order that Defendant make himself available for fingerprinting by the United States' fingerprint expert.

IV

CONCLUSION

For the foregoing reason, the Government respectfully requests that its motions for reciprocal discovery and fingerprint exemplars be granted.

DATED: April 20, 2008.

Respectfully Submitted,

KAREN P. HEWITT
United States Attorney

S/ A. Dale Blankenship
A. DALE BLANKENSHIP
Assistant United States Attorney
Attorneys for Plaintiff
United States of America
Email: Dale.Blankenship@usdoj.gov

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. GUMERCINDO GONZALEZ-BASTIDA, Defendant.	))))))))))	Criminal Case No. 08CR0883-JAH **CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, A. DALE BLANKENSHIP, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **NOTICE OF MOTION AND MOTION FOR RECIPROCAL DISCOVERY and FINGERPRINT EXEMPLARS** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Sylvia Baiz, Esq.

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 20, 2008.

s/ A. Dale Blankenship
A. DALE BLANKENSHIP